IDAHO DEPARTMENT OF LANDS

Public Hearing on Proposed Fee Rules
IDAPA 20, Rules of the IDL
MR. ERIC WILSON: Okay. Recording has started. Okay. It is now 9:00 A.M. on Wednesday, September 30th, 2020. We are on the record for the public hearing bearing proposed rule docket 20-0000-2000F.

Good morning. My name is Eric Wilson, Public Trust -- the Resource Protection and Assistance bureau chief for the Idaho Department of Lands. Thank you all for attending today.

The most important part of this hearing is gathering testimony from the participants. To do that in an orderly fashion, with participants in person, through Zoom, and via phone I need to do some housekeeping first.

For those on Zoom and on the phone, please mute your screen or phone until you are ready to talk and then re-mute when you are done. This reduces feedback and distracting background noises as this hearing is being recorded.

For those attending in person, please keep your mask on and respect social distancing while in the building. If you are unable to do that, you'll be asked to leave and join via phone or
Zoom. Please make sure that you have signed in and indicated which sets of rules you wish to provide testimony on.

For those on Zoom, Mick Thomas, division administrator for Mining, Public Trust, Oil and Gas, please use the chat feature to help gather the names of those participants and which rules they wish to provide testimony on. The chat function is on the bottom bar of your Zoom screen.

For those on the phone only, I will ask each of you to clearly state your name and identify which set of rules you wish to provide testimony on. We aren't taking testimony yet, but we will be going through each set of rules in turn for testimony on those rules. So do we have anyone on the phone?

MR. MICK THOMAS: Eric, if you don't mind, I'm going to hop in real quick and do a little bit of housekeeping on my end. Thank you for the introduction.

Again, my name is Mick Thomas, division administrator over Minerals, Public Trust, Oil and Gas. Eric is on site today and he's the,
uh--he'll be leading this discussion.

If you are on Zoom, please use the chat function. It's a little icon at the bottom that says 'Chat.' Enter your name, type it in, and send it to the group. You can say 'Reply all' and enter your name in there so we have it.

If you don't put your name in via chat or tell us verbally, um, now, or sign the sign-in sheet onsite with Eric, you won't be recorded as being a part of this hearing--or, uh, public comment period, excuse me.

And something else that Eric said as a courtesy as far as muting goes, obviously this doesn't apply to the folks in the room, but if there is background noise, we will ask you to mute. If it doesn't happen, we will mute you proactively. And if it continued, we would have the discretion to disconnect you remotely. Again, that's a worst-case scenario.

But it's very important, especially the folks on the phone and Zoom--well, yeah, to please mute whenever possible because of the echo and the background noise. So thanks a ton.

John, I think you--I see you just signed in.
Thank you very much. And I'll repeat what Eric said. Is there anyone on the phone or who would like to sign in orally right now other than—you know, if not you could—you could use the chat function. But right now, is there anyone who would like to sign in orally by stating and spelling your name?

Okay. Fine. I appreciate that. And, Eric, I'll hand it back to you. Thank you for that. Thank you for the flexibility to let me say some words.

MR. WILSON: All right. Thanks, Mick. Okay. Well, thank you all for your patience since we completed the roll call first for participants.

Before we start the hearing, I want to give a general background for this hearing. This rule docket is for all fee rules administered by the Idaho Department of Lands. The 2020 legislature did not pass a concurrent resolution to approve all fee rules through the next legislative session. As a result, all fee rules expired at the end of the 2020 legislative session.
The Board of Land Commissioners, Oil and Gas Conservation Commission, and Idaho Board of Scaling Practices approved temporary rules to fill in the gap between the end of the 2020 legislative session and the end of the 2021 legislative session.

This rule docket seeks to bring a set of pending rules before the 2021 legislature for their review and approval as permanent rules. These rules are largely the same as the current temporary rules with one exception IDAPA 20.03.02 rules governing mined land reclamation.

House Bill 141 passed during the 2019 legislative session made substantial modifications to Title 47, Chapter 15, Idaho Code.

The changes to the Mined Land Reclamation Act required a temporary rule to be approved before August 1, 2019. The Department met this deadline but further negotiations were needed to replace the temporary rule with the pending rule to be reviewed by the legislature.

Those negotiations were conducted August through November 2019 under Docket Number 20-02-

Compliance for executive orders 2019-02 and 2020-01 required additional changes. And rulemaking by the Department of Environmental Quality on ore processing by cyanidation rules IDAPA 58.01.13 required parallel changes to the proposed rule for IDAPA 20.03.02.

Testimony on IDAPA 20.03.02, rules governing mined land reclamation, will be taken first. Following that, the Department will take testimony on all other fee rules in the order listed on Page 986 of the administrative bulletin.

The format of this hearing is prescribed by rule. This prescribed hearing format does not include an opportunity for multi-party dialogue. The hearing is your opportunity to provide public testimony regarding the proposed rules.

If you have questions or would like me to discuss the rule or some other aspect related to rules, please contact me directly afterwards and we'll give you the contact information or the
program manager or bureau chief best suited to
answer your question.

Testimony that strays too far from the rules
may be gently guided back to the proposed rules.
This is a public forum and I ask all of you to
listen respectfully to all speakers and to speak
respectfully to all listeners.

These proposed rules were published in the
September 16, 2020, Idaho Administrative
Bulletin, Volume 20-9SE. The rules in the
bulletin are the official versions and all
comments should be based on that version.

A rulemaking website is now updated and
provides a web link to the bulletin and offers
an overview of the rulemaking. Both written and
oral comments are very important at this stage
of the rulemaking. Changes to the proposed rule
can only be made based on written or oral
comments received on or before October 7, 2020.

IDL will review these comments and evaluate
whether or not additional rule changes are
needed. We will then prepare the rules for
review by the Idaho State Board of Land
Commissioners at their October meeting, by the
Oil and Gas Conservation Commission and Idaho Board of Scaling Practices at their November meeting. Based on their recommendations, we will then submit pending rules for consideration by the 2021 legislature.

Please make sure that IDL receives your comments before October 7th. If you've brought written comments today, please make sure to give us a copy.

As a suggestion to help move things along and give everyone who wishes an opportunity to speak, those who plan to submit typed written comments should best use their oral testimony to briefly summarize the written comments or to elaborate on specific points.

Since the written oral comments are given in the same—-are given the same consideration, simply reading your submitted written comments verbatim does not give them more weight.

Regardless of whether or not you have written comments to submit, please do not hesitate to testify. This is your opportunity to give us feedback on the rules.

Please make sure you have signed in at the
back of the room and have checked the boxes for either written testimony, oral testimony or both. Everyone who wants to speak gets one turn at the microphone per set of rules. There will be no rebuttals.

As there is no time limit on testimony, please keep in mind that other people may have signed up to testify and we will adjourn by 10:30 A.M.

And with that, did I get the sign-in sheet? So then we will start with IDAPA 20.03.02, rules governing mined land reclamation, and we will start with those who are here in person. And then we'll move to our Zoom participants, and then if there's phone-only participants, they will follow.

Okay. We don't have anyone signed up in person for oral testimony. So have we--are we--okay.

MALE VOICE: [Unintelligible].

MR. WILSON: All right. I will--

MALE VOICE: [Unintelligible].

MR. WILSON: Yeah, up here on the podium.

So first we have Ben Davenport with the Idaho
MR. BEN DAVENPORT: Thanks, Eric and Ben Davenport with the Idaho Mining Association. I will be brief today as we are preparing written comments on the document on the docket.

But I wanted to stand up and make sure everyone knew how appreciative we were with the department in the process over the last 18 months and 10 drafts of this rule. We've seen—I don't know over 100 comments and had plenty of rulemaking so I thought the process went well.

Stakeholders were engaged and I want to express my gratitude to the Department for taking our comments into consideration as well as the other stakeholders.

And I do think you have a rule that is close and something that will be workable for both the industry and for the Department in the future going forward.

I think it is—I think it would—it was imperative for the State of Idaho to update their financial assurance regulations and I think we achieved much of our goals throughout
this process as well as throughout the drafting of the statute and the House Bill 141.

So I am hopeful that we can continue to go forward and that the industry will certainly see this as a benefit, and the State of Idaho and the taxpayers will also see the benefit in the updating of these rules.

So that's all I have today, but we will provide some written comments in regards to a few small changes that I think we would like to see in the docket, but I don't think they're major and I think we're real close to it.

So I appreciate the time over the last couple years and I appreciate your time today.

MR. WILSON: Okay. That does it for our in-person testimony. Is there anybody on Zoom who would like to provide testimony on 20.03.02?

MR. THOMAS: We are monitoring that, Eric. Stand by.

MR. WILSON: Okay. Thanks, Mick.

MR. THOMAS: So far no one has sent me a message saying they would like to provide comment. The majority of people on Zoom are from affiliated agencies but we do have a few
stakeholders here as well.

Specifically, I see Lori Lusty with Simplot. Lusty and Allen Gilda. I don't think neither one of them has sent me a text. Wait. Stand by. Allen Gilda is indicating he'll offer a comment by phone. He did dial in to the Zoom number so let's see if we can bring him on. Go ahead, Allen.

MR. ALLEN GILDA: This is Allen.

MR. WILSON: Go ahead, Allen.

MR. GILDA: Yes. Thank you for allowing us to try to participate in this rulemaking.

While the rules who--will look like they work for the larger mining companies, there still seems to be discrimination against the small miner, the hard rock bucket miner.

You know, I'll continue to stand up and argue on that end of things that there should be either something that the rules are--to provide appropriate, size-appropriate regulations or requirements versus taking a small person that wants to disturb a few square--a few hundred square feet or an acre or so and making them go through the same things.
I mean that's 50 or a 100 or a 1,000 acres to go through, so that's--that's my concern still that that is--the small guy hasn't been addressed. And as a result because of the cost, all the way around from the application fees to the required information in these rules that the small guy basically is shoved out the door in Idaho.

And I've provided a couple of examples throughout the time and I'll go ahead and submit those in writing on places where wording can be provided. I know in the formal summary you said that small operations such as the bucket miner ones for hard rock does not require reclamation plans for operation.

But the rules don't seem to reflect that same viewpoint or they say 'all mining operations, exploration, etc.' So if there is such thing as it doesn't require for such small operations, as like my bucket mining operations or projects, then maybe there's some place that you can put it in either under exploration or under the 'do not apply' or somewhere in that area.
So I'll be supplying more information on that in the written testimony, but that's where I'm coming from still.

MR. THOMAS: Mr. Gilda, thank you for that comment. I do have a clarifying question for you and I know we're not in negotiated rulemaking currently.

I just want to make sure I understand that your comments are going to revolve around us providing clarity as to who these changes apply to and who they don't, or what operations they apply to and what they don't apply to?

MR. GILDA: Yeah, because in the--the September 16th public summary of the note--of the negotiated rulemaking you say that IDL has not required a reclamation plan for operation as described in the comments.

But the rules themselves say that 'all must,' and so that--that seems like a contradiction in directive for a small operator. So that's--I'm trying to get some, yes, some clarity in that and, you know--or if we have to go through the permitting thing, that's not a problem if it is size appropriate and reasonable
fees for a small—-a small-scale operation that's more like a weekend hobby project.

MR. THOMAS: All right. Thank you, Mr. Gilda. I appreciate that clarification.

MR. GILDA: You're welcome. Thank you.

MR. THOMAS: Next is Patty McGrath with the United States Environmental Protection Association Region 10. She's going to make a brief comment so, Patty, it's to you.

MS. PATTY McGRATH: Okay. I hope you all can hear me.

MR. THOMAS: We've got you. Thank you.

MS. McGRATH: Great. I just want to make a brief comment to, I think, similar to Ben's comment, express appreciation for the work that the Idaho Department of Lands has done on the rule and the negotiated rulemaking process and allowing us to provide comments and input into the process.

And we have seen changes to the rule based on our comments and other stakeholders' comments, so that's highly appreciated. I'm not sure if EPA will be sending written comments on the draft rule. We're still looking at it and
making that determination, but I did want to just take the time to express my thanks to the Idaho Department of Lands, and thanks from EPA management as well who have been involved in helping review the rule and participate in the process.

MR. THOMAS: Thank you, Patty. Do you have any more comments?

MS. McGRATH: Not at this time.

MR. THOMAS: All right. All right. Thank you very much. I don't have anyone else who has asked to comment via Zoom. I'll give one last call. All right. No more comments by Zoom. Eric?

MR. WILSON: Okay. Is there anyone just on the phone who wants to provide oral testimony? Going once? Twice? Okay. Great. So that wraps up the 20.03.02 portion.

And with that we'll move on to the next rule, 20.02.14, rules for selling forest products on state-owned endowment lands starting on Page 989 of the bulletin. Does anybody wish to provide comment on those rules? Okay. Not hearing anyone.
The next rule is 20.03.01, rules governing dredge and placer mining operations in Idaho starting at Page 992 of the bulletin. Does anybody wish to provide comments on those rules?

MR. THOMAS: And, folks, when Eric says that, he also includes the Zoom participants if there is any confusion.

MR. WILSON: Okay. Next, 20.03.03, rules governing administration of the reclamation fund starting on Page 1051 of the bulletin. Does anybody wish to provide comment on these rules? Okay.

The next is IDAPA 20.03.04, rules for the Regulation of Beds, Waters, and Airspace for Navigable Lakes in the State of Idaho, starting on Page 1055 of the bulletin. Does anybody wish to provide comment on this rule?

MR. THOMAS: Okay. You're doing a phenomenal job.

MR. WILSON: Okay, great. I'm filling them up here. Next is IDAPA 20.03.05, River Bed Mineral Leasing in Idaho, starting on Page 1074 of the bulletin. Does anybody wish to provide comment on this rule? Okay.
Next is IDAPA 20.03.08, easements on state-owned lands starting on Page 1079 of the bulletin. Does anybody wish to provide testimony on this rule? Okay. We'll take that as a 'no.'

Next is IDAPA 20.03.09, Easements on State-owned Submerged Lands and Formerly Submerged Lands starting on page 1084 of the bulletin. Does anybody wish to provide testimony on this rule? I'll take that as a 'no.'

Next is IDAPA 20.03.13, Administration of Cottage Site Leases on State Lands starting on Page 1090 of the bulletin. Does anybody wish to provide comments on this rule?

MR. THOMAS: Eric, it looks like we do have a comment coming.

MR. WILSON: Okay. Go ahead.

MR. THOMAS: Allen, you--you--are you going to make some comment on that or not? Or Mr. Gilda?

MR. GILDA: No, I didn't have any comments on these.

MR. THOMAS: Okay.

MR. GILDA: Maybe it's somebody else's
comment but it looks like they must be muted or something.

MR. THOMAS: All right. That's fine. We were just trying to manage it here so thank you, and your number popped up, right? So I was trying to be proactive, but it doesn't look like we have any comments on this, Eric. Thank you.

MR. WILSON: Okay. Cottage site rules are a 'no' then for comments. IDAPA 20.03.14, the rules governing grazing, farming, conservation, and noncommercial recreation, and communication site leases beginning at Page 1091 of the bulletin. Any comments on these rules? Okay. I'll take that as a 'no.'

Next is IDAPA 20.03.15, rules governing geothermal leasing on Idaho state lands starting at Page 1101 of the bulletin. Any comment on these rules? Okay. We'll take that as a 'no.'

Next is IDAPA 20.03.16, rules governing oil and gas leasing on state lands starting on Page 1114 of the bulletin. Any comment on these rules? Okay. I'll take that as a 'no.'

Next is IDAPA 20.03.17, rules governing leases on state-owned submerged lands and
formerly submerged lands starting on Page 1127 of the bulletin. Any comments on these rules?

Okay. I'll take that as a 'no.'

Okay. We're in the home stretch, folks.

Next is IDAPA 20.04.02--

MR. THOMAS: [Interposing] Stand by, Eric.

We had someone hop in.

MR. WILSON: Oh, okay.

MR. THOMAS: Was--was there comments?

MS. WENDY MILLER: Yeah. I--

MR. THOMAS: [Interposing] Go ahead.

MS. MILLER: Uh, yeah. I'm sorry. I'm a little bit out of place. I had a difficulty. It said to type 'star six' and to be able to speak. This is Wendy Miller and I wasn't able to speak back in the beginning.

So then I hung up, I recalled, and now I'm able to get through, so I'm a little out of place. Can I make a comment here?

MR. THOMAS: Wendy, thank you. Ms. Miller, thank you. And just for the record, I believe you're wanting to talk about 20.03.02?

MS. MILLER: That is correct, mm-hmm.

MR. THOMAS: All right. Please, go ahead.
MS. MILLER: Yes. First of all, I'm grateful for meetings and comments to include to the--that you've included it in to the public. And I'm also grateful for you answering questions and I have a question for IDL if that's all right.

I have mining claims on this federal land and with respect to mining on it, after I get these permits and I have my bonds from the feds, what does IDL require before I can start mining on it?

MR. WILSON: So, Ms. Miller, we can talk about that offline after the hearing. This is not a question and answer session.

You missed the intro. This rule format is for--or the hearing format is prescribed by rule. We are only accepting comment. This is not a discussion forum, but we certainly--

MS. MILLER: [Interposing] Okay.

MR. WILSON: --can certainly have that discussion with you afterwards.

MS. MILLER: Okay.

MR. THOMAS: Ms. Miller, I've got your phone. I'll coordinate with Eric this afternoon.
if at all possible to get back on the phone with you, okay?

MS. MILLER: Thank you.

MR. THOMAS: Thank you. Okay, Eric. We're back on line.

MR. WILSON: Okay. We are on IDAPA 20.04.02, rules pertaining to the Idaho Forestry Act and Fire Hazard Reduction laws starting on Page 1135 of the bulletin. Are there any comments on these rules? Okay. We'll take that as a 'no.'

Next is IDAPA 20.06.01, rules of the Idaho Board of Scaling Practices starting on Page 1145 of the bulletin. Are there any comments on these rules? Okay. We'll take that as a 'no.'

And last one, IDAPA 20.07.02, rules governing conservation of oil and natural gas in the state of Idaho starting on Page 1155 of the bulletin. Are there any comments on these rules? Okay. We'll take that as a 'no.'

And then before ending, I have one last chance. Is there anyone else in attendance who would like to provide comments but didn't indicate so? And this is your turn to comment.
on a rule that you did not previously commented on? Anyone? Okay. Mick, anyone on the Zoom or phone?

MR. THOMAS: No, no one--no one came through. I think the two people that I was aware of was Patty, Allen, and Wendy and they all provided comment and obviously Mr. Davenport was there in person, and so we appreciate that.

MR. WILSON: Great, thank you. So that closes it the hearing for today. It is now 9:33. Thank you for participating in the rule making process.

MR. THOMAS: Thanks, folks. Chris, you can stop recording now and we'll go ahead and end the session.

[END RECORDING]
CERTIFICATE

I, Karen D. Schiff, certify that the foregoing transcript of the Idaho Department of Lands, Public Hearing held on September 30th, 2020, was prepared using standard electronic transcription equipment and is a true and accurate record to the best of my ability. I further certify that I am not connected by blood, marriage or employment with any of the parties herein nor interested directly or indirectly in the matter transcribed.

Signature: ____________________________________________

Date __________ October 11, 2020 ________